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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/662,492	09/15/2000	J. Keith Kelly	6945.002.00	3670
30827	7590	10/15/2003	EXAMINER	
MCKENNA LONG & ALDRIDGE LLP 1900 K STREET, NW WASHINGTON, DC 20006			GART, MATTHEW S	
			ART UNIT	PAPER NUMBER
			3625	

DATE MAILED: 10/15/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/662,492

Applicant(s)

KELLY ET AL.

Examiner

Matthew s Gart

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 29 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 21-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 September 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

No amendments were filed via Paper No. 8. Claims 1-20 are pending in the instant application and claims 21-33 were withdrawn from further examination via Paper No. 4.

#### ***Drawings***

This application has been filed with informal drawings, which are acceptable for examination purposes only. Figures 3-5 contain rough text, which may affect clarity when reproduced.

Applicant is required to submit a formal correction of the noted defect. Applicant is required to submit drawing corrections promptly. Drawing objections may no longer be held in abeyance.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

**Claims 1-2, 4, 8-13, and 18-20 are rejected under 35 U.S.C. 102(a) as being anticipated by Koppert (PTO-892, Ref U).**

Referring to claim 1. Koppert discloses a method of providing information on pesticides, comprising inputting into a computer:

- The identity of a pest existing on a property (Koppert: at least page 2 and page 14);

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- The identity of a plant or crop existing on the property, wherein said plant or crop is adversely affected by said pest (Koppert: at least page 2 and page 14); and
- Executing an algorithm for generating therefrom instructions for choosing a pesticide to protect said plant or crop from said pest (Koppert: at least page 2 and page 14).

Koppert's use of natural enemies requires due attention. Success depends on several factors, such as crop, cultivation circumstances and the crop protection agents used. These must be combined into an appropriate system for each particular crop in various situations, where ultimately a recommended protocol is established. Such a protocol outlines the introduction strategy of natural enemies and any chemical correct measures. Koppert has developed these protocols for a variety of crops.

The Examiner notes that in the instant application, the information inputted into the computer (identity of a pest and identity of a crop) is not linked to the information used in executing the algorithm. There is not a linking limitation connected these separate steps.

Referring to claim 2. Koppert further discloses a method wherein said instructions allow for a comparison of different products (Koppert; at least page 3).

Referring to claim 4. Koppert further discloses a method comprising obtaining the product by sale on-line (Koppert: at least page 2).

Referring to claim 8. Koppert further discloses a method wherein information regarding an on-line sale of the product is entered into a central database (Koppert: at least page 11-12).

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Referring to claims 9-12. Koppert further discloses a method comprising accessing a farm-planning guide to assist a user in optimizing crop yield, providing information regarding seeds, and providing information regarding fertilizers (Koppert: at least page 13).

Referring to claim 13. Claim 13 is rejected under the same rationale as set forth above in claim 1.

Referring to claims 18-20. Claims 18-20 are rejected under the same rationale as set forth above in claims 9-12.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Koppert (PTO-892, Ref U) in view of Valent (PTO-892, Ref W).**

Referring to claim 3. Koppert discloses a method according to claim 1 as indicated supra. Koppert does not expressly disclose a method wherein the instructions provide access to a material safety data sheet. Valent discloses a method wherein the instructions provide access to a material safety data sheet (Valent: page 7). At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to have modified the system of Koppert to have included the limitations of Valent as

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discussed above in order to facilitate a solution to the user's specific need (Valent: page 4).

**Claims 5-7 and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Koppert (PTO-892, Ref U) in view of DoYour (PTO-892, Ref X).**

Referring to claim 5. Koppert discloses a method according to claim 4 as indicated supra. Koppert does not expressly disclose a method wherein the algorithm initiates an analysis of restrictions on the sale of the pesticide. DoYour discloses a method wherein the algorithm initiates an analysis of restrictions on the sale of the pesticide (DoYour: at least page 11). At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to have modified the system of Adgen in view of Valent to have included the limitations of DoYour as discussed above in order to insure that the consumer has the correct product and application instructions for the job (DoYour: page 1).

Referring to claim 6. Koppert in view of DoYour discloses a method according to claim 5 as indicated supra. Koppert further discloses a method wherein analysis includes validating information regarding a pesticide applicator (Koppert: at least page 4).

Referring to claim 7. Koppert in view of DoYour discloses a method according to claim 5 as indicated supra. Koppert further discloses a method wherein the analysis includes validating information regarding a pesticides dealer (Koppert: at least pages 8-10).

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Referring to claim 14. Claim 14 is rejected under the same rationale as set forth above in claim 5.

Referring to claim 15. Claim 15 is rejected under the same rationale as set forth above in claim 6.

Referring to claim 16. Claim 16 is rejected under the same rationale as set forth above in claim 7.

### ***Response to Arguments***

Applicant's arguments filed 9/22/2003 have been fully considered but they are not persuasive.

The Examiner notes, with reference to claims 1 and 13, the applicant submitted that a prima facie case of obviousness has not been established over the claimed invention.

The Examiner further notes, claims 1 and 13 were rejected under 35 U.S.C. 102(a) as being anticipated by Koppert (PTO-892, Ref U), not as being obvious over Koppert (PTO-892, Ref U), therefore the Applicant's arguments concerning a prima facie case of obviousness is not persuasive.

The Applicant notes the Koppert does not teach, inputting into a computer the identity of a pest existing on a property and executing an algorithm for generating instructions for choosing a pesticide to protect an inputted plant from the inputted pest. Koppert does disclose inputting the identity of a pest, the identity of a crop (page 2) and executing an algorithm (protocol) for generating instructions.

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In the previous Office Action it was noted that in the instant application, the information inputted into the computer (identity of a pest and identity of a crop) is not linked to the information used in executing the algorithm. There is not a linking limitation connected these separate steps. The Applicant submitted information relating to antecedent basis in order to rectify this issue. The intention of the aforementioned statement (Paper No. 14, Bottom of Page 3) was to show that the information inputted into the computer relating to the pest and the crop is not shown to be relevant to the algorithm for generating therefrom instructions for choosing a pesticide to protect said plant or crop from said pest. This algorithm could have been performed via information inputted by the host computer (vs. the user). There is no limitation connecting the use of the information inputted by the user to be used in calculating the algorithm.

The Examiner notes, referring to claims 3, 5-7 and 14-16, the Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the



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shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

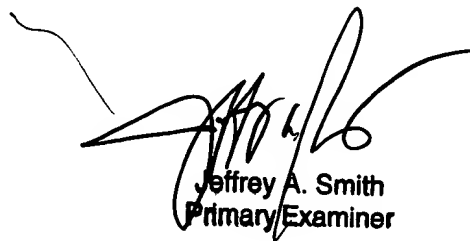
Any inquiry concerning this communication should be directed to Matthew Gart whose telephone number is 703-305-5355. This examiner can normally be reached Monday-Friday, 8:30AM-5:30PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ms. Wynn Coggins can be reached on 703-308-1344. The fax phone numbers for the organization where this application or proceeding is assigned are 703-746-7239 for regular communications and 703-746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-305-3900.

MSG

October 10, 2003



Jeffrey A. Smith  
Primary Examiner